

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

David S. Pierce And Nancy A. Pierce

Case No. 11-80296

Chapter 13

Social Security No. xxx-xx-4883 and xxx-xx-0267
Address: 3503 Shady Creek Drive, Durham, NC 27713-

Debtors

OBJECTION TO CLAIM

NOW COME the Debtors above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully object to the proof of claim filed by the creditor FIRST AMERICAN CAPITAL V LLC its successors and/or assigns, and dated May 18, 2011, for the following reasons:

1. The Debtors believe the “pre-petition” arrearage claim in the amount of \$6,190.61 is overstated. Per recent statement mailed to the Debtors on 1/14/2011, the monthly payment owed to Statebridge was \$ 450.00, with Arrears owed in the amount of \$2,700.00 as of January 14, 2011. the Statement is attached to this objection
2. First American Capital V. LLC, has failed to provide evidence that it is the assignee of the Note and Deed of Trust originally owed to Beneficial of North Carolina, and has further failed to provide evidence regarding Statebridge Company, LLC’s entitlement to the monthly payments owed by the Debtors.
3. The Proof of Claim asserts that First American Capital V LLC, and its successors and/or assigns is entitled to fees totaling \$150.00 for the following described expenses:
 - a. Legal fees for preparing Proof of Claim \$ 150.00
4. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, First American Capital V LLC, and its successors and/or assigns must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower’s last known address within 30 days after assessing the fee.
5. First American Capital V LLC, and its successors and/or assigns’s proof of claim does not specify when the fees were incurred, and does not specify when the fees were assessed.
6. First American Capital V LLC, and its successors and/or assigns’s proof of claim does not include a copy of the explanatory statement mailed to the borrower at the borrower’s last known address.

7. First American Capital V LLC, and its successors and/or assigns's failure to provide notice of the fees charged constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, No. 10-10303 (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, No. 09-80794, (Bankr. M.D.N.C., Nov. 24, 2009) (2009 WL 4113587).

Because the Debtors contest the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtors are, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

WHEREFORE, the Debtors pray that the Court enter an Order disallowing the above referenced fees, and reducing the pre-petition arrearage claim accordingly. Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtors request that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).

Lastly, pursuant to N.C.G.S. § 6-18 & 19, the Debtors pray that the costs of this action be taxed to the Creditor and that the attorney for the Debtors be awarded fees in the amount of \$500.00.

Dated: July 15, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
N.C. State Bar No. 23003
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CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 15, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

FIRST AMERICAN CAPITAL V LLC,
Attn: Managing Agent
C/O Tatum Law Firm PLLC
2101 Rexford Road, Ste 165 W
Charlotte, NC 28211-

U.S. Bankruptcy Administrator

Richard M. Hutson, II
Chapter 13 Trustee

/s Renee Nolte
Renee Nolte